

REMARKS

As very diligent efforts have been undertaken to particularly point out and distinctly claim the invention disclosed in this application, entry of this Response and consideration of the claims and supporting arguments is respectfully requested.

The Examiner has again objected to the recitation of “said lintel” on the basis that this term lacks antecedent basis. Apparently, the Examiner does not consider the term “lintel” in the phrase “lintel receiving support” in each of independent Claims 21 and 26 to affirmatively recite the lintel as an element. Claims 1 and 26 have been amended to remove any possibility of considering the term “lintel” as a adjective modifying the term support. With the amendments to independent Claims 1 and 26, the basis for the objection in the identified dependent claims has been vitiated. Withdrawal of the objection is respectfully requested.

Claims 1-9 and 17-18 have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier patent in view of further teachings contained in the Greenberg patent. In particular, the Greenberg patent is used for the purpose of alleging that it is obvious to incorporate the tensioning rods of Greenberg in the Gravier wall between the posts in order to “provide additional support to the wall”.

The main function and purpose of the Gravier invention is that of using specially

configured blocks that have ridges and grooves to provide an interlock between adjacent blocks. As set forth in column 3, lines 1-7, the primary object of the Gravier invention is to provide “interlocking stackable block structures for erecting a shock-resistant wall array or arrangement, where the individual block structures are provided with interlocking top and bottom surfaces which define intermediate webs for supporting the individual blocks in a vertically stacked arrangement.” In the Greenberg patent, conventional courses of blocks are used that have no interlocking feature and the junctions between adjacent blocks are filled with grout. Thus, the Greenberg wall does not have the features and end results espoused in the Gravier patent. To strengthen the Greenberg wall, tensioning rods are employed. Such tensioning rods are not necessary for the Gravier wall. Therefore, one skilled in the art would not be induced or inclined to go to the additional expense in terms of material and labor to install tensioning rods since the configuration of the interlocking blocks provides the requisite strength.

One must therefore come to the inescapable conclusion that the tensioning rods taught in Greenberg would be unlikely to be used by a mason in a wall constructed in accordance with the Gravier teachings since such a wall inherently has the strength sought by the Greenberg wall. As one skilled in the art would be unlikely to provide the combination suggested by the Examiner, it is respectfully submitted that the proposed combination of teachings in order to support the rejection under 35 USC § 103 would not be made.

A shopping cart approach to support an obviousness rejection is not permissible. That is, it is not appropriate to pick elements from two or more patents and combine them to meet the recitations of a claim unless there is some teaching or at least a suggestion within the references themselves for such combination. In instances where there is a teaching away from a proposed combination of teachings, a rejection based upon obviousness is highly inappropriate.

The Gravier patent does not teach the use of a lintel. For example, element 18 in Figure 1 refers to “leveling pads” for the individual fence block rows (see Column 4, lines 1-3). These leveling rods nest on the ground. To the cognicenti, it is clear that leveling pads are not the equivalent of a lintel. The underlying ground provides vertical support for the courses. This support is provided by the above ground lintels in the present invention. Elements 88 and 89, shown in Figure 6 of Gravier are not lintels. They are footings resting on the ground for supporting the individual panels (see column 6, lines 56-60).

Claim 1 in paragraph (b) clearly recites a lintel receiving support at each end from footings to place the lintel above ground and supporting a plurality of courses. Neither the Gravier nor the Greenberg patent teach such structure. Furthermore, such structure is not suggested in either of the prior art patents.

Furthermore, paragraph (c) of Claim 1 recites tensioning rods extending

upwardly from the lintel into the wall. Neither of the applied patents incorporate or suggest tensioning rods embedded in a lintel.

In paragraph (e) of Claim 1, there is recited further tensioning rods extending upwardly from within each footing and into the respective one of the posts. The Gravier patent does not include tensioning rods in the posts. It simply has conventional reinforcing rods (rebars) vertically arranged within the vertical cavity in the posts. One must therefore come to the inescapable conclusion that because of the interlocking configuration of the blocks forming the posts, the added benefits of the tensioning rod(s) is not warranted and that conventional rebars for this purpose are sufficient. Thus, one skilled in the art would not be inclined to or otherwise be induced to incorporate tensioning rods and the attendant expense for materials and labor since conventional rebars are sufficient.

It is therefore respectfully suggested that the rejection under 35 USC § 103 of Claim 1 be withdrawn. As Claims 2-9 and 17-18 depend from Claim 1, they are also allowable.

Claims 7-9 have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier patent in view of further teachings contained in the Greenberg and Wallin patents. For reasons set forth below, it is respectfully requested that this rejection be withdrawn.

Claims 7-9 depend from independent Claim 1. As set forth above, Claim 1 recites subject matter that cannot be derived, in the sense of 35 USC § 103, from the proposed combination of teachings set forth in the Gravier and Greenberg patents. The Wallin patent is cited only for the teachings of a C-shaped channel. The Wallin patent does not address the insufficiency or paucity of teachings contained in the Gravier and Greenberg patents in order to support the rejection of Claim 1 based upon obviousness.

Accordingly, withdrawal of the rejection of Claims 7-9 is respectfully requested.

Claims 23-25 have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier and Greenberg patents for reasons set forth with respect to Claims 1-9 and 17-18. Claims 23-25 are method claims, which define a methodology for constructing a wall having the beneficial features of the present invention.

For reasons set forth above, neither the Gravier nor the Greenberg patent teach the use of a lintel supported above ground. Accordingly, the step recited in paragraph (e) of Claim 23 “placing a lintel on each of the plates to locate the ends of the lintel in the slots of the respective posts and above ground” cannot possibly be carried out by any structure taught in either of the two patents used in support of the 35 USC § 103 rejection of Claim 23-25.

The steps recited in paragraphs (b) and (d) in Claim 23 cannot be carried out from any teachings contained in the Gravier or the Greenberg patents as there is no teaching or suggestion for these steps.

For reasons set forth above, the structure resulting from exercise of the steps set forth in these method claims would result in a wall structure different from any wall structure that would result from one skilled in the art having the teachings of the Gravier and Greenberg patents before him/her. Accordingly, these method claims recite the construction of a wall that is not suggested by nor certainly not obvious over any construction steps that one skilled in the art would undertake having the Gravier and Greenberg teachings before him/her. Therefore, withdrawal of the rejection of the Claims 23-25 is respectfully requested.

Claims 26-31 have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier and Greenberg patents. For reasons set forth above, the Gravier wall would not be modified by a mason to incorporate the tensioning rods of Greenberg. Moreover, the present invention is directed to an above ground wall which requires the use of a lintel. Neither the Gravier wall nor the Greenberg wall is above ground. The Gravier element contended by the Examiner to comprise a lintel is not in fact a lintel. It is simply a reinforced course lying on the ground and receiving support from the ground throughout its length.

For these and the previously recited reasons, the presently recited wall structure is far beyond any obvious combination of teachings set forth in the Gravier and Greenberg patents. Withdrawal of the rejection of Claims 26-31 is respectfully requested.

Claims 29-31 have been rejected in view of various teachings contained in the Gravier patent combined with further teachings contained in the Greenberg and Wallin patents. For reasons set forth above, the Wallin patent is insufficient to cure the deficiencies of the Gravier patent and any combination of the Greenberg teachings incorporated therein. As Claims 29-31 depend from independent Claim 26, which is not obvious over the Gravier and Greenberg patents, withdrawal of the rejection of Claims 29-31 is respectfully requested.

Claims 32-34 are method claims that have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier and Greenberg patents. By exercising the steps recited, a mason would end up with a wall that is unlike either the Gravier or Greenberg walls. Moreover, the resulting wall would have features that would not and could not be considered obvious combinations of elements set forth the Gravier and Greenberg patents for reasons set forth above. It is therefore respectfully submitted that method Claims 32-34 recite steps that a mason, having the Gravier and Greenberg teachings before him, would not undertake.

Withdrawal of the rejection of Claims 32-34 is respectfully requested.

New Claim 35, depending from Claim 32, has been added to recite a further step in building the wall structure described in the application.

In view of the significant amendment to the claims to more particularly point out and distinctly claim the invention, the clear lack of need for incorporating tensioning rods in the Gravier wall in view of the particularly configured blocks to obtain stability and robustness and the fact that the Gravier wall is not an above ground wall coupled with the inadequacy of the Greenberg patent to supply these missing teachings, it is believed that the application is in condition for allowance, which allowance is respectfully requested.

Respectfully Submitted,

CAHILL, VON HELLENS & GLAZER P.L.C.

A handwritten signature in dark ink, appearing to read "C. Robert von Hellens", is written over a light blue horizontal line.

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